that the quantum of damages be assessed by the registrar. I think it would be expedient that the assessment of the quantum of damages be left to the arbitrator to whom the claim is being referred.

In the result the appeal is allowed as regards the second order to set aside the warrant of arrest. That order of the deputy registrar is set aside. Order 3 will remain. So will orders 1 and 4 (in respect of which the plaintiffs withdrew their appeal). Order 5 should, however, be modified to read:

> That the plaintiffs do pay to the defendants damages for wrongful detention of the vessel 'Evmar' from 14 to 15 March 1988 and such damages shall be assessed by the arbitrator to whom the plaintiffs and the defendants will be referring their dispute.

Costs

The defendants submitted that the main thrust of their application in the summons-in-chambers was to secure the immediate release of the vessel without having to furnish alternative security and to obtain a stay of all further proceedings. As they have succeeded in both, they should be awarded costs, or at least a substantial part of those costs. As I see it, there were two main applications in the summons. The first was to have the warrant of arrest set aside (primarily for non-disclosure of material facts) and the second was for a stay of proceedings. The defendants have failed in the first but succeeded in the second. Of course the defendants have also succeeded in obtaining the release of the vessel without having to furnish any alternative security. The arguments before the deputy registrar centred more on the first point than on the second. Before me there was hardly any argument on the point regarding stay as the appeal against that order had been withdrawn. The defendants have failed to obtain the release of the vessel on the main ground, ie setting aside of the warrant.

Having considered all the circumstances, including the arguments raised by the parties at the further hearing, I think it is just that the plaintiffs should only bear one-third the costs of the defendants for the hearings before me as well as before the deputy registrar.

Order accordingly.

Solicitors: *Godwin & Co; Drew & Napier.*

Reported by *Terence Tan Bian Chye*

Seah Kok Huah v Public Prosecutor

HIGH COURT (SINGAPORE) – MAGISTRATE'S APPEAL NO 149 OF 1987
LAI KEW CHAI J
30 MARCH 1989

Criminal Law – Cheating foreign workers pursuant to a common intention – Whether elements of case proved

Evidence – Evidence of possession of forgery equipment – Whether evidence relevant and whether evidence of possession highly prejudicial to accused

Criminal Procedure – Sentencing – Four months' inprisonment for offence of cheating foreign workers pursuant to a common intention – Accused's first offence – Amount of money paid to accused significant to complainants

The appellant, a contractor and supplier of foreign workers, was convicted of three charges of having cheated three Bangladeshis by providing them with forged work permits instead of genuine ones. The prescribed punishment for each conviction was imprisonment for a term which could extend to seven years and a fine. The appellant was sentenced to four months' jail on each charge. The sentences for the first and second convictions were to run consecutively and the third sentence was to run concurrently with the two (sic). He appealed against the convictions and sentence. He contended that the district judge who decided the case had misdirected himself on the nature and ingredients of the charges which were not charges of cheating alone but were charges of cheating committed pursuant to a common intention. It was also argued that there was no evidence linking the appellant to the cheating. The appellant claimed that evidence that equipment for forging work permits was found in his possession was wrongly admitted and highly prejudicial to him since he was not charged with forgery. Appeal against the sentence was on the grounds that the amounts involved were small, that this was the appellant's first offence, his role in the crime was minor and that he had co-operated with the police.

Held, dismissing the appeals against conviction and sentence:

(1) Reading the whole of the district judge's grounds of decision, it was clear that the district judge was aware of the nature of the charges. He had made a finding of fact that the appellant and his confederate had planned to cheat the three complainants.

(2) There was overwhelming evidence establishing beyond reasonable doubt that the appellant had planned to cheat the complainants. The evidence of the appellant that he was not involved in the cheating was, not surprisingly, disbelieved by the district judge.

(3) The appellant's argument that the evidence that he was found in possession of equipment for forgery was wrongly admitted was totally untenable in the light of his modus operandi for cheating.

(4) The amount involved in the cheating was not insignificant to the complainants. There was a need to deter other like-minded people who might be tempted to prey on foreign workers.

(5) The sentence of the appellant was not manifestly excessive and would have been enhanced by the court except for two factors. The first was that the appellant's wife suffered a

miscarriage as a result of the proceedings against the appellant. Second, four years have elapsed since the appellant stood trial and although he was on bail, he must have been under mental anguish.

Spencer Gwee for the appellant.
Ismail Hamid for the respondent.

Cur Adv Vult

Lai Kew Chai J: The appellant, a 36-year old male Chinese who described himself as a sub-contractor, a supplier of foreign workers and a foreman, was convicted of three charges of having cheated three Bangladeshi nationals in October and November 1984. The prescribed punishment for each conviction was imprisonment for a term which could extend to seven years and fine. He was sentenced to four months' imprisonment for each conviction. It was ordered that the sentences for the first and second convictions were to run consecutively and the third sentence was to run concurrently with the two. I have just concluded the hearing of his appeal against conviction and sentence.

The three Bangladeshi nationals gave evidence. Their evidence was to the effect that a Bangladeshi national, known as 'Haque' who was not apprehended, had promised them lawful employment in Singapore if they would pay US$400 in one case and US$500 in each of the other two cases. Haque told them that they would be met in Singapore by the appellant who would procure the work permits and find them the employment. They said that when they arrived in Singapore, they met the appellant, whom they identified. As directed by Haque, two of them handed the required sums in US dollars, the passports and the air tickets to him and they saw him handing over the documents and money to the appellant. In the third case, they were handed to Haque in the presence of the accused. The appellant handed the two forged work permits to two Bangladeshi workers; the third forged work permit was given by Haque in the presence of the appellant. They were taken to worksites by the appellant, as arranged, to work. On 7 March 1985 one of the Bangladeshi nationals was arrested. The other two were also arrested. It was established that the three work permits purportedly issued were forgeries and that they were not employed by a construction company. They were therefore unlawfully working in Singapore. The passports were never returned to the three Bangladeshi nationals.

Abdul Halim Kadar, an immigration officer, said in evidence that on 8 March 1985 he raided the appellant's flat at Blk 7 Marsiling Drive #01-54 and arrested the appellant who led him to his briefcase which contained two round Bangladesh authority metal seals, two rubber stamps apparently belonging to the Bangladesh Immigration Department and a copy of a Singapore work permit. These were obviously the necessary paraphernalia which would or could be used for the kind of deception we are considering in this case. It was also proved that the appellant had procured employment for two of the foreign workers; he had planned this employment since September 1984.

The appellant was tried. The prosecution's case against him was that together with Haque, and in furtherance of a common intention of them both, he did cheat the three Bangladeshi nationals by deceiving them into believing that they would be issued work permits lawfully permitting them to work in Singapore and had thereby induced them to deliver to the appellant their Bangladesh passports and the said three sums of money in US dollars which they would not have done if they had not been so deceived.

I now turn to the grounds of appeal. First, it was submitted that the learned district judge had misdirected himself on the nature and ingredients of the charges which were not charges of cheating simpliciter but were charges of cheating committed pursuant to a common intention. The learned district judge said in this connection: 'The evidence showed clearly that the workers were brought by Haque to Singapore and the accused was there to receive them. This means that there was a prior arrangement between Haque and the (appellant) to cheat the workers by falsely representing to them that the (appellant) would be able to get work permits for them.'

That passage should not be looked at in isolation. In a later part of his grounds of decision, the learned district judge said:

> The accused admitted that he did go to Bangladesh to meet Haque and to get workers to come to Singapore. This showed clearly that he and Haque had acted in concert to import workers to Singapore by falsely representing to them that they would be able to obtain the work permit by paying a certain sum of money.
>
> Secondly, all the prosecution witnesses gave more or less the same evidence. They were simple country folks landed in a foreign country in search of a job and they were therefore at the mercy of the unscrupulous men like Haque and the accused. I don't see any reason for them to lie in court against the accused.
>
> Thirdly, all the witnesses testified that they handed their passports, air tickets and money to Haque who handed them over to the accused. The explanation given was that the accused needed all those items to obtain the work permits, etc. If the accused was as innocent as he claimed to be, why did he gang up with Haque to go through the scheme to deceive the workers from a foreign country?
>
> Fourthly, the exhs P30-P33 found in the accused's brief case. The purpose of these exhibits was to forge passports, etc. His explanation that they were left by Haque is indeed incredible. From his demeanour I was of the view that he was not a witness of truth.

It is true, as counsel for the appellant observed, the grounds of decision had reproduced the three charges of cheating simpliciter, without any reference to the common intention shared with Haque. Nor was there any reference to the acts of cheating which were committed in furtherance of the common intention. It was plain to me, and it is completely incontrovertible, that this reproduction was a mistake. In preparing the records of appeal, the learned district judge had in his certificate reproduced the correct three charges. Most importantly, I refer to the above passages from his judgment which contain correct and wholly warranted findings of fact that the appellant and his confederate, Haque, had planned together to cheat the three foreign workers by falsely telling them they would procure work permits for them and lawful employment when, in truth and in fact, they provided them with forged work permits.

Secondly, counsel for the appellant made what appeared to me to be the wholly unwarranted submission that there was no evidence linking the appellant to the cheating. He submitted that the evidence did not incriminate the appellant, that the appellant in his various involvements, was only returning the earlier favours done for him by Haque, that he did not know about the nature of the paraphernalia found in his briefcase which, he claimed, were left behind by Haque. It is not a matter of surprise that the appellant was not believed by the learned trial judge. Lastly, I refer to another astonishing submission of counsel for the appellant. He submitted that the said paraphernalia were inadmissible as evidence as the appellant was not facing a forgery charge and that they were highly prejudicial and not relevant to the charges of cheating. His proposition has to be stated in the light of the foregoing evidence to reveal its untenability. The modus operandi in this cheating case involved the tampering of the passports and the forging of the work permits. The Bangladesh seals and stamps, with their apparent official connotations, and the specimen work permit were the sort of things used in connection with this particular cheating. They were found in the briefcase of the appellant. The appellant had to explain. He tried and, not surprisingly, he was disbelieved by the learned trial judge. In my judgment, there was overwhelming evidence establishing beyond any reasonable doubt that he together with Haque set about cheating the three foreign workers in the way set out in the charge. They planned it and perpetrated the crime. The appeal against the three convictions is dismissed.

I asked counsel for the appellant to address me why the sentences should not be enhanced because of the gravity of the offences. Counsel submitted that the amount involved was small, that this was the appellant's first offence and that Haque had played the dominant role. It was said that he had co-operated with the police. Well, the amounts were not insignificant to the foreign workers; in fact, in the case of one of them, he sold his land to raise the money and the expenses in the hope of working in Singapore. The appellant's role at the Singapore end involved the passing on of the forged work permits, the accommodation and unlawful employment of the foreign workers. His claim that it was all Haque's crime, with which he had nothing to do, was rejected by the 'earned trial judge. They cheated innocent workers who had to leave their kith and kin, home and country, to eke out a living as manual labourers. I have very little sympathy for the appellant. There is also a need to deter other like-minded people who may be tempted to prey on foreign workers and cause unnecessary problems for the administration in relation to foreign workers. However, there were two factors which I will mention and but for which I would have enhanced the sentences. First, I was satisfied that his wife in May 1985 suffered a miscarriage owing to the stress of the investigation and charging of the appellant. She has recently given birth in January 1989 to the second child, a daughter. Secondly, four years have elapsed since he first stood trial and, although he has been out on bail, he must have been under some mental anguish during the pendency of this case. For these two reasons, I did not enhance the sentences which, in all the circumstances, were not manifestly excessive.

Appeal dismissed.

Solicitors: *Spencer Gwee & Co.*

Reported by *Terence Tan Bian Chye*